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Supreme Court of the United States

OCTOBER TERM, 1970

No. 71-302

ANNIE NELL RATLIFF AND HENRY RATLIFF,
PETITIONERS,

versus

COOPER LABORATORIES, INC., RESPONDENT

ALICE W. NICHOLS, PETITIONER,

versus

STERLING DRUG COMPANY, INC., A CORPORATION,
RESPONDENT

PETITIONERS' REPLY TO RESPONDENTS' RETURN TO A PETITION FOR A WRIT OF CERTIORARI

This reply brief is submitted pursuant to the provisions and Rule 24, section 4 of the Rules of the United States Supreme Court, as amended 1970, and is addressed to the following arguments first raised in respondents' Return (brief in opposition) to the petition for a Writ of Certiorari.

I

Notwithstanding the reference in respondents' return to the percentage of total sales made by respondent, Cooper Laboratories, Inc., in South Carolina, its sales in the amount of approximately $95,000.00 per year, are substantial.

Respondent, Cooper Laboratories, Inc., apparently seeking to create the impression that its sales in South Carolina are not substantial, makes reference on page 2 of its Return (brief in opposition) that its activity in South Carolina includes sales which constitute approximately seven-tenths (7/10) of one per cent (1%) of its total sales in 1968 and five-tenths (5/10) of one per cent (1%) of its total sales in 1969.

In connection with the foregoing reference, we deem it appropriate to quote the language of the Court of Appeals in *Green v. U. S. Chewing Gum Mfg. Co.*, 224 F. (2d) 369 (C. A. 5, 1955), in which it was held that sales of $25,000.00 yearly were "substantial", notwithstanding that the same constituted a very small part of the total business of defendant, as follows:

> "It will not do to deny substantiality by replying, as said defendant does in its President's affidavit, that ' * * * the gross business of U. S. Chewing Gum Mfg. Co., * * * represented by shipment to these two customers * * * is a very small part of the total business of my company' for if that were the rule, we would have different tests of substantiality applying to different corporations according to their size; a large corporation could, with impunity, engage in the same acts which would subject a smaller corporation to jurisdiction and venue. We agree with Judge Allan K. Grim of the Eastern District of Pennsylvania that the test is rather, 'whether or not the sales would appear to be substantial from the average businessman's point of view.' *Sunsbury Wire Rope Manufactur-*

ing Company v. United States Steel Corporation, D. C. E. D. Pa., 129 F. Supp. 425, 427."

It is respectfully submitted that the foregoing quoted language applies with equal force to the factual situation in the instant cases.

II

Contrary to respondents' contention, the case of Green v. Chicago, Burlington & Quincy Railroad Company, 205 U. S. 530, does not preclude the District Court from assuming jurisdiction in the instant cases.

Respondents, in their Return on page 5, cite *Green v. Chicago, Burlington & Quincy Railroad Company, supra,* as authority for their contention that the assumption of jurisdiction in the cases at bar would violate due process. First, as pointed out by petitioners in their Statement of Case on pages 3-5 of the petition for a Writ of Certiorari, the respondents' activities in South Carolina are regular, systematic, continuous and substantial.

Moreover, as so clearly expressed by Judge Rives in *Green v. U. S. Chewing Gum Mfg. Co., supra,* at page 371:

> "The question of whether cases governed by federal law are to be tried in one locality or another is now no longer to be tested by the rigid rules set forth in *Green v. Chicago, Burlington & Quincy Railroad Company,* 205 U. S. 530, 27 S. Ct. 595, 51 L. Ed. 916, the Supreme Court having since that decision interpreted its subsequent holding in *Eastman Kodak v. Southern Photo Materials Co.,* 273 U. S. 359, 47 S. Ct. 400, 71 L. Ed. 684, as recognizing that, 'Refinements such as previously were made under the 'mere solicitation' and 'solicitation plus' criteria * * * were no longer determinative.' *United States v. Scophony Corp.,* 333 U. S. 795, 807, 68 S. Ct. 855, 861, 92 L. Ed. 1091."

To the same effect is *Frene v. Louisville Cement Co.* (D. C.), 134 F. (2d) 511, 516 cited together with *International Shoe v. Washington*, 326 U. S. 310 and *Perkins v. Benquet Consolidated Mining Co.*, 342 U. S. 437, in the concurring opinion of Mr. Justice Blackmun, who then sat as a member of the Court of Appeals in the case of *Ark-La Feed and Fertilizer Co. v. Marco Chemical Co.*, 292 F. (2d) 197 (C. A. 8, 1961), as authority that "the general and recognizable trend of judicial decisions is in favor of a broad rather than a narrow concept of jurisdiction."

It is interesting to note that in *Lilly and Company v. Sav-On-Drugs*, 366 U. S. 276, a case in which the contacts, ties and relations of Lilly and Company, an Indiana Corporation, with New Jersey, were similar to those of the respondents herein with South Carolina, the Court held that the activities of Lilly and Company constituted doing of business in New Jersey.

III

Respondents' contention that residency of a plaintiff in the forum State is a requirement of Federal due process in an action against a foreign corporation on a foreign cause of action is not supported by the decisions of the United States Supreme Court, but rather is in direct conflict with Federal principles and Constitutional prohibitions, as laid down by the decisions of the Federal Courts.

With reference to the crucial issue presented for review by the petition for a Writ of Certiorari, the respondents, on pages 5 and 6 of their Return, contend that the decisions of the Supreme Court in *International Shoe v. State of Washington*, 326 U. S. 310 and *Hanson v. Denckla*, 357 U. S. 235, and other Courts of Appeal, support a rule that residency of a plaintiff in the forum state is a requirement of federal due process in an action against a foreign

corporation on a foreign cause of action, notwithstanding that a resident plaintiff would be free to maintain the identical cause of action against the foreign corporation. Petitioners disagree sharply with this contention.

It is respectfully submitted that a careful reading of *International Shoe* finds no support for this contention. There the Court held that "the regular and systematic solicitation of orders in the state by appellants' salesman, resulting in a continuous flow of appellants' products into the state, was sufficient to constitute doing business in the state so as to make appellant amenable to suit in its courts." The activity of the corporation in the cited case was similar to the activities of respondents in the cases at bar; and the result in the cited case was bottomed on the activities of the corporation and not upon the residency of plaintiff. And in *Perkins v. Benquet Consolidated Mining Co.*, 342 U. S. 437, in which a nonresident plaintiff sued upon a cause of action which did not arise in a forum state, it was held that federal due process would not be violated by the assumption of jurisdiction over the foreign corporation under such circumstances.

Neither is *Hanson v. Denckla*, 357 U. S. 235, cited by respondents, controlling, as there the defendant did not **purposely** conduct its activities within the forum state, as distinguished from the instant cases where the respondents purposely availed themselves of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws.

In *Jennings v. McCall Corporation*, 320 F. (2d) 64, (C. A. 8, 1963), cited by respondents, the Court did not reach the question of federal due process because the forum state there, in contrast to South Carolina, did not extend its service of process laws to the outer limits allowed by *International Shoe*. It is interesting to note, however, that

this case involved mere solicitation and shipment of goods into the state, and the Court therein stated:

> "Neither party seriously contends that jurisdiction is precluded in this case by federal due process requirements."

In *Partin v. Michaels Art Bronze Company, Inc.*, 202 F. (2d) 541 (C. A. 3, 1953), also cited by respondent on this point, the plaintiff was a citizen and resident of the forum state and jurisdiction was denied, but obviously not upon any ground that plaintiff was a nonresident of the forum state.

It thus appears that respondents' contention that residency of a plaintiff in a forum state is a requirement of federal due process not only fails to find support in the decisions of this Court but, on the contrary, is also in violation of federal principles and constitutional prohibitions enunciated by this Court and other federal courts as pointed out in the petition for a Writ of Certiorari.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the petition for a Writ of Certiorari, it is respectfully submitted that this Court should grant the petition, should reverse the judgment of the Court below and should affirm the order of the District Judge that the respondents are amenable to jurisdiction in South Carolina.

Respectfully submitted,

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